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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

PRENTINA WALKER et al.,

Plaintiffs and Appellants,

v.

PACIFIC HOSPITAL OF LONG BEACH,

Defendant and Respondent.

B211172

(Los Angeles County
Super. Ct. No. NC031979)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Deanne Smith Myers and Joseph E. Diloreto, Judges. Affirmed.

The Dorton Firm and Fred D. Dorton, Jr. for Plaintiffs and Appellants.

Fonda & Fraser and Christopher L. Smith for Defendant and Respondent.

Prentina Walker and her husband, Marvin Jones, appeal from an adverse judgment in their action for medical malpractice. They argue the trial court erred in excluding the declarations of their medical experts, that defendant Pacific Hospital of Long Beach (Hospital) did not provide evidence of compliance with the standard of care warranting summary judgment, and that they raised triable issues of material fact. We conclude the Hospital's initial showing in support of summary judgment was sufficient, and that the declaration of Dr. Plourd, plaintiffs' expert, should not have been excluded under Health and Safety Code section 1799.110, subdivision (c) (hereafter section 1799.110(c)) because that statute is inapplicable. We find no abuse of discretion in the exclusion of the untimely declaration of plaintiffs' other medical expert witness. We affirm the judgment because the declaration of Dr. Plourd does not cite nor discuss what is the applicable community standard of care in support of his opinions. We reject plaintiffs other arguments regarding the standard of care.

FACTUAL AND PROCEDURAL SUMMARY

This medical malpractice action arises from events surrounding the stillbirth of plaintiffs' child at defendant Hospital. Plaintiffs arrived at defendant Hospital's emergency room at approximately 9:10 p.m. to 9:15 p.m. on January 12, 2006. Mrs. Walker, who was nine months pregnant, was cramping, and thought she could be in labor. She waited about 20 minutes before being asked to fill out admissions paperwork although she already had preregistered at the hospital for admission to labor and delivery. About five to 10 minutes after she sat down, Mrs. Walker started to bleed, with the blood running down her leg.

Mrs. Walker was triaged in the emergency room at 9:40 p.m. She was taken to the labor and delivery department, arriving at 9:48 p.m. Her obstetrician, Dr. Salako, was telephoned at that time. He ordered an ultrasound and made other orders. Nurses unsuccessfully searched for fetal heart tones. A sonogram performed between 9:48 p.m. and 10:00 p.m. also indicated the absence of fetal heart tones. Dr. Salako was telephoned again and told there were no heart tones. An emergency doctor was called at 10:00 p.m.

According to defense expert Dr. Gilbert Martin's reading of the hospital records: "A spontaneous vaginal delivery occurred at 22:03 with the nurses receiving the baby, at which time a complete placental abruption was noted." A placental abruption occurs when the placenta peels away from the inner wall of the uterus before delivery. It deprives the baby of oxygen and nutrients and may cause heavy bleeding in the mother. Dr. Salako arrived at 10:30 p.m. The baby was stillborn.

Plaintiffs sued defendants Hospital, Olusegun Z. Salako, M.D. and Olusegun Z. Salako, M.D., Inc. for negligence. The third amended complaint is the charging pleading. Defendant Hospital moved for summary judgment. Defendants Salako and his corporation were voluntarily dismissed without prejudice by plaintiffs after the summary judgment motion was filed. Plaintiffs opposed the motion and submitted the declarations of their attorney, Fred D. Dorton Jr., and Dr. David M. Plourd. Defendant Hospital objected to plaintiffs' evidence and replied to their opposition.¹

The trial court sustained objections to the declaration of plaintiffs' medical expert, Dr. Plourd, finding that he lacked the emergency medical qualifications to provide an expert opinion in this matter as required by section 1799.110(c). The trial court also ruled that the Hospital's policies, on which Dr. Plourd relied, did not establish the standard of care because expert medical testimony is required for that purpose.

In the alternative, the trial court found that even if Dr. Plourd's declaration was considered, it failed to address causation. The court found no triable issue of material fact as to causation. Counsel for plaintiffs raised an oral objection to the qualifications of defense expert, Dr. Gilbert Martin, to testify to causation. The objection was overruled.

On the merits of the summary judgment motion, counsel for plaintiffs cited the supplemental declaration of Dr. Marie Russell, an expert emergency room physician,

¹ Counsel for plaintiffs was under the impression that the July 24, 2008 hearing was for a motion to compel depositions and that the summary judgment would be heard on July 30, 2008. Counsel for defendant Hospital and the court both understood the summary judgment was to be heard July 24, which the reporter's transcript of July 17, 2008 confirms.

which had been filed that morning. The court found the supplemental declaration to be untimely and declined to receive it.

Summary judgment was granted and judgment in favor of defendant Hospital was entered. Plaintiffs sought reconsideration, arguing the trial court erred in ruling their medical expert, Dr. Plourd, was not qualified to give an expert opinion on emergency room care under section 1799.110(c). In addition, plaintiffs argued that, contrary to the court's ruling, Dr. Plourd did address causation in his declaration and that there was a triable issue of material fact as to whether defendant Hospital breached the standard of care. Defendant Hospital opposed the motion for reconsideration. The motion was heard by a different judge because the judge who granted summary judgment had passed away. The motion was denied. This timely appeal followed.

DISCUSSION

I

“A defendant moving for summary judgment bears the burden of showing that a cause of action has no merit because plaintiff cannot establish an element of the claim or because defendant has a complete defense. If the defendant makes this showing, the burden then shifts to the plaintiff opposing the summary judgment motion to establish that a triable issue of fact exists as to these issues. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768; Code Civ. Proc., § 437c, subds. (a), (p)(2).) [¶] ‘The party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact’ [Citation.]” (*Garibay v. Hemmat* (2008) 161 Cal.App.4th 735, 741 (*Garibay*).)

Plaintiffs argue that defendant Hospital failed to meet its burden of establishing there is no triable issue of material fact as to whether it complied with the applicable standard of care. But they cite no authority on the standard of care in such circumstances or to the record to support this claim. Plaintiffs provide only citations to cases setting out the standard principles governing motions for summary judgment in the trial court and on appeal. In another section of their brief, plaintiffs assert “Defendants failed to establish,

or define prima facie, the applicable standard of care for the hospital in their motion for summary judgment and their motion should have been denied, regardless of Plaintiffs' opposition, due to Defendant's failure to meet its initial burden." Once again, no citation to authority or to the record is provided in support of this assertion.

"When a brief fails to contain a legal argument with citation of authorities on the points made, we may "treat any claimed error in the decision of the court . . . as waived or abandoned." [Citation.]' (*Ellenberger v. Espinosa* (1994) 30 Cal.App.4th 943, 948.)" (*Harding v. Harding* (2002) 99 Cal.App.4th 626, 635; see also *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856 ["It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations." [Citation.] If a party fails to support an argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived."].)

In any event, we find defendant Hospital did provide sufficient evidence of compliance with the standard of care. The Hospital submitted the declaration of Dr. Jonathan D. Lawrence. Dr. Lawrence was board certified in emergency medicine, and was engaged in the full-time, active practice of emergency medicine in Long Beach. Dr. Lawrence declared: "Based upon the presenting symptoms described by both plaintiffs during their depositions, there was no clinical indication requiring an emergent response. It is not customary to assess or treat pregnancy related conditions in expectant women over 20 weeks gestation in the Emergency Department. The customary manner of handling an expectant mother presenting with complaints of 'abdominal cramping' is to notify personnel in the Labor & Delivery department and ask the patient to make herself comfortable until someone is able to come for her. Based upon my review of the plaintiffs' testimony and the medical records, it is my opinion that the personnel at Pacific Hospital of Long Beach complied with the standard of care when receiving this patient at 21:00 to 21:15 hours."

After reviewing the dangers attendant to the performance of a cesarean delivery in an emergency room, Dr. Lawrence opined: "It is my opinion based upon my review of

the medical records and the plaintiffs' deposition testimony that Pacific Hospital of Long Beach complied with the standard of care in responding to the patient once bleeding manifested." He said: "[B]ased upon the plaintiffs' testimony and the medical records it is my opinion that the response provided was appropriate and timely." Dr. Lawrence reviewed the evidence of the timing of events and concluded "it is my opinion that based upon the approximate time Prentina Walker began to experience the manifestation of bleeding that there was no reasonable opportunity for Pacific Hospital of Long Beach to reasonably effect an earlier delivery of the child. It is my further opinion that [Hospital] and its emergency department staff complied with the standard of care in all aspects of the care provided to Prentina Walker." Based on his review of the medical records, autopsy report, and Dr. Martin's declaration, Dr. Lawrence opined that defendant Hospital was not the "cause, in whole or part, of the stillbirth."

"Both the standard of care and a defendant's breach must normally be established by expert testimony in a medical malpractice case." (*Avivi v. Centro Medico Urgente Medical Center* (2008) 159 Cal.App.4th 463, 467.) This evidence is sufficient to satisfy defendant Hospital's burden in support of the motion for summary judgment.

II

Plaintiffs argue the trial court erred in applying section 1799.110(c) to exclude the declaration of their medical expert, Dr. Plourd. "In professional malpractice cases, expert opinion testimony is required to prove or disprove that the defendant performed in accordance with the prevailing standard of care [citation], except in cases where the negligence is obvious to laymen. [Citation.]" (*Kelley v. Trunk* (1998) 66 Cal.App.4th 519, 523.)" (*Garibay, supra*, 161 Cal.App.4th at p. 741.) Additional qualifications for expert witnesses who testify regarding emergency medical care are required by section 1799.110(c): "In any action for damages involving a claim of negligence *against a physician and surgeon providing emergency medical coverage* for a general acute care hospital emergency department, the court shall admit expert medical testimony only from physicians and surgeons who have had substantial professional experience within the last five years while assigned to provide emergency medical coverage in a general acute care

hospital emergency department. For purposes of this section, ‘substantial professional experience’ shall be determined by the custom and practice of the manner in which emergency medical coverage is provided in general acute care hospital emergency departments in the same or similar localities where the alleged negligence occurred.” (Italics added.)

Plaintiffs rely on *Baxter v. Alexian Brothers Hospital* (1989) 214 Cal.App.3d 722 (*Baxter*). In that case, a pregnant woman, who was experiencing severe pain and had been vomiting blood, was brought to the emergency room of defendant hospital. An emergency room physician, aware of the plaintiff’s pregnancy, assumed she was having a miscarriage and left her in a treatment room for two and one-half hours. Periodically, the plaintiff’s abdomen and blood pressure were checked. Her blood pressure continued to drop and she went into severe shock. The plaintiff’s personal physician was called by a family member, and on examination, determined that plaintiff needed immediate surgery. No anesthesiologist was available and the physician was told it would take too long to assemble a surgical backup team. The plaintiff was transferred to another hospital where she received surgery for a ruptured fallopian tube as the result of an ectopic pregnancy. In her malpractice complaint, the plaintiff alleged the hospital was negligent in failing to have surgical staff available for emergency surgery. (*Id.* at p. 724.) She apparently did not allege negligence based on the treatment, or failure to provide treatment, in the emergency room itself. (*Ibid.*)

The choice by the plaintiff in *Baxter* not to base her complaint on the conduct in the emergency room led the court to conclude that section 1799.110(c) was inapplicable. The court reasoned: “The legislative purpose underlying section 1799.110 is not furthered by restricting claims against a hospital which do not implicate the performance of the treating physician. We conclude, therefore, that the court erred in applying this section where there was no allegation of negligent care by an emergency physician.” (*Baxter, supra*, 214 Cal.App.3d at p. 726.) It distinguished *Jutzi v. County of Los Angeles* (1987) 196 Cal.App.3d 637: “The action here, unlike that of *Jutzi* does not arise from an allegation of negligence by the emergency room physician who treated [the plaintiff]; it

involves a claim that the hospital failed to provide essential hospital services” (*Baxter, supra*, at p. 726.) Plaintiffs argue that *Baxter* is directly on point.

Respondent’s brief does not discuss either *Baxter* or *Jutzi*. In *Jutzi*, we examined section 1799.110(c). The plaintiff had suffered a broken ankle which was set and placed in a cast at defendant hospital’s emergency room by a physician who was not an orthopedic surgeon. Circulation in her lower leg was impaired, resulting in gangrene and eventual amputation of her leg below the knee. (*Jutzi, supra*, 196 Cal.App.3d at p. 645.) Two expert witnesses for plaintiff who did not meet the criteria of section 1799.110 were precluded from testifying that the treatment provided fell below the standard of care. (*Id.* at p. 646.)

On appeal, plaintiff argued that section 1799.110(c) was inapplicable because it applies to suits against physicians, while her action was against the County of Los Angeles which operated the hospital. The *Jutzi* court held: “We conclude that the legislative exclusion of expert testimony by physicians who do not have substantial recent experience working in a hospital emergency room is based at least in part on the public policy of encouraging the provision of emergency medical services by insulating the providers of such services from assertions of negligence made by expert witnesses who lack expertise in hospital emergency room care.” (*Jutzi, supra*, 196 Cal.App.3d at p. 648.)

The *Jutzi* court concluded that section 1799.110 applied: “While not a model of clarity, subdivision (c) appears to refer to actions for damages which involve a claim of negligence against a physician or, in other words, actions which arise from a claim that a physician was negligent in providing emergency medical care. This interpretation has the benefit of hinging application of the section on the relevant consideration of the nature of the claim involved, rather than on the fortuitous circumstance of which particular parties have been named in the suit.” (*Jutzi, supra*, 196 Cal.App.3d at p. 650.) It reasoned that a holding that the statute is inapplicable to an action against a hospital, rather than a physician, would frustrate the purpose behind the statute which was codified in Health and Safety Code section 1797.5: “It is the intent of the Legislature to promote the

development, accessibility, and provision of emergency medical services to the people of the State of California.”

The court also noted that the Legislative Counsel construed the language as applying “to actions involving a claim of negligence by a physician, but not as limiting its scope to actions against physicians.” (*Jutzi, supra*, 196 Cal.App.3d at p. 651.) The court concluded “it would have been illogical for the Legislature to seek to [encourage the provision of emergency medical care] by shielding the physician from personal liability in certain situations while allowing the hospital or the governmental entity that operates it to be sued under the doctrine of respondeat superior.” (*Ibid.*)

We turn to the allegations of the third amended complaint, the charging pleading, to determine the nature of plaintiffs’ negligence claim. Paragraph 4 alleges that hospital staff made Mrs. Walker “sit and fill out admission documents while [she] was in active labor. As [she] continued to fill out the admission documents, she began to visibly bleed while sitting in the chair. Her clothes were noticeably filled with blood.” The next paragraph alleges that a nurse from the labor and delivery department saw Mrs. Walker sitting in a pool of blood, “then assisted with taking [her] to labor and delivery.” Paragraph 6 alleges Mrs. Walker gave birth to her stillborn daughter without the assistance of a physician. Paragraph 15 alleges: “Plaintiffs are informed and believe that Defendants, . . . are negligently, intentionally, strictly, or otherwise responsible for events and happenings and caused Plaintiffs’ injuries by such conduct.”

The first cause of action for medical malpractice alleges: “Despite representations and warranties of Defendants . . . , as health care providers, they did negligently and carelessly diagnose, examine, care, observe, fail to warn, inform, fail to inform, treat, attend, furnish equipment, advise, care, supervise, entrust, and render medical services to PLAINTIFF WALKER and Decedent BABY GIRL WALKER so as to directly and legally cause injury and damage.” As a result of negligence, carelessness and conduct of the defendants, plaintiffs allege their daughter died.

Like the complaint in *Jutzi*, these allegations are somewhat general and vague, but the gravamen is that defendant Hospital failed to provide immediate treatment required

by the standard of care in light of Mrs. Walker's condition as she sat in the emergency room and filled out admission paperwork and again while she was in the labor and delivery department. The first aspect of plaintiffs' case is based on the failure of Hospital personnel to recognize the severity of Mrs. Walker's condition while she was left waiting in the emergency room before being triaged. The second aspect concerns the actions or omissions which occurred in the labor and delivery room.

As in *Baxter*, plaintiffs do not base their complaint on any act or failure to act by an emergency room physician or surgeon. From the record, it appears that Mrs. Walker was not seen by an emergency room physician until she was in the labor and delivery department, at which point no fetal heart sounds could be detected. Instead, plaintiffs' allegation is that the Hospital failed to recognize the severity of her condition and the necessity for immediate treatment before she was taken to the labor and delivery department. Unlike *Jutzi, supra*, 196 Cal.App.3d 637, the claim against defendant Hospital is not based on a theory of respondeat superior arising from treatment provided by emergency room physicians or surgeons. Section 1799.110(c) applies to "any action for damages involving a claim of negligence against a physician and surgeon providing emergency medical coverage" Since this is not such an action, the statute does not apply. The trial court erred in excluding Dr. Plourd's declaration on this ground. In light of this conclusion, we need not, and do not, address plaintiffs' other arguments regarding the inapplicability of section 1799.110(c).

Dr. Plourd's declaration in opposition to the motion for summary judgment states that he is a physician, board certified in obstetrics and gynecology. He had been engaged in the clinical practice of obstetrics and gynecology since 1986. He had published papers on obstetrics and gynecology, had been an assistant professor of obstetrics and gynecology at two medical centers, had staff privileges at a hospital as an obstetric hospitalist, and had been an examiner for the American Board of Obstetrics and Gynecology since 2003. This provided an adequate foundation for his expert testimony. Nevertheless, the declaration is not adequate to raise a triable issue of material fact as we next discuss.

III

Plaintiffs focus on the timing of the placental abruption. Dr. Plourd reviewed defendant Hospital's medical chart for Mrs. Walker, which included the autopsy of the baby; the declarations of the defense expert witnesses, Drs. Martin and Lawrence; and depositions of plaintiffs in addition to the motion for summary judgment and a declaration by a custodian of records.

Dr. Plourd declared: "My opinions stated herein are based upon a reasonable degree of medical probability, given my review of the above-captioned documents, my education, training, experience, and familiarity with the standard of care applicable herein." He declared that detaining Mrs. Walker outside the emergency room to fill out admission papers was "in direct conflict with the 'Emergency Room Policy and Procedure Policy #1047-23, which reads, 'On arrival . . . any patient who is 20 or more weeks pregnant, shall be escorted directly to the Labor and Delivery Department'"

A copy of the policy was attached to the declaration as exhibit B. It is entitled "Emergency Room Policy & Procedure" and "Standard of Care: Treatment of the Patient in Labor/Suspected Labor." It states that the purpose is to "[e]stablish criteria for the treatment of pregnant [women] in active labor on arrival in the Emergency Department." Section 1 of the policy states that a woman who is 20 or more weeks pregnant, on arrival at the emergency department, "shall be escorted directly to the Labor and Delivery Department for evaluation" by wheelchair or gurney. Subdivision C of section 1 states that the patient may be returned to the emergency department for further evaluation if the labor and delivery staff rule out labor. Section 2 addresses the appropriate course of action if a woman is in active labor on arrival to the emergency department "and time does not allow safe transportation to the Labor and Delivery Department." In these circumstances, an emergency department physician is to evaluate the patient to determine whether birth is imminent. If it is, the emergency room physician is to prepare for delivery. The labor and delivery department is to be contacted to advise of imminent delivery in the emergency department. Either the patient's own obstetrician or the

obstetrician on call is to be contacted. The emergency room is to prepare for possible resuscitation.

Mrs. Walker was at 35 weeks gestation when she arrived at defendant Hospital. Dr. Plourd declared: “There is no indication, from the testimony or from the medical record, that Mrs. Walker’s initial presentation to the Emergency Department suggested that ‘time does not allow safe transportation to the Labor and Delivery Department’ which, per that same Policy, would require that she be ‘evaluated by the Emergency Department physician.’”

In his declaration, Dr. Plourd describes the role of the placenta in a pregnancy and placental abruption. He explained that a sudden and massive blood loss signals a complete abruption that can cause a mother to lose her ability to clot, leading to exsanguination. Plaintiffs rely on the following part of the declaration: “Such massive bleeding, as described in this instance, would be expected to occur as an immediate manifestation of a complete abruption. Only in instances of partial abruption might bleeding be delayed or concealed. Hence, *within a reasonable degree of medical probability*, given this patient’s clinical presentation, her abruption occurred while completing paperwork in the Emergency Department. Had Emergency Room Policy & Procedure, as captioned above, been followed, *Mrs. Walker’s abruption would likely have occurred in Labor & Delivery, where staff would have been familiar with the acute and emergent evaluation and management of heavy bleeding per vagina. There is a substantial chance, were that the case, that this baby could have been born alive.*” (Italics added.)

The trial court sustained a defense objection to portions of Dr. Plourd’s declaration based on the attached policy, finding that the policy did not establish the standard of care, which must be stated by a medical expert.²

² The trial court did not rule on Hospital’s objection that the policy on which Dr. Plourd relied was not properly authenticated, and Hospital does not raise the lack of authentication in its brief on appeal.

Significantly, Dr. Plourd relies only on the Hospital's violation of its policy to support his opinions. Although he states that his opinions are based on his familiarity with the applicable standard of care, he does not identify that standard. “““[A]n expert's opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based. [Citations.]” [Citation.]” (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 530, quoting *Powell v. Kleinman* (2007) 151 Cal.App.4th 112, 123.) Dr. Plourd's declaration therefore failed to raise a triable issue of material fact precluding summary judgment.

IV

For the first time in their reply brief, plaintiffs argue the trial court erred in refusing to consider the declaration of Dr. Russell, offered on the morning of the hearing on the summary judgment motion. An argument raised for the first time in a reply brief need not be considered. (*Renna v. County of Fresno* (2000) 78 Cal.App.4th 1, 7, fn. 1.) In any event, the trial court acted within its discretion in disregarding the declaration as untimely. (*Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 259.) Plaintiffs assert that they were unaware of the necessity for a declaration by an emergency room physician until defense counsel raised the foundational problems with Dr. Plourd's declaration at the first hearing on the summary judgment motion on July 17, 2008. This is their only explanation for the late filing of the declaration by Dr. Russell. In light of the allegations of the complaint which we have discussed, counsel for plaintiffs should have been aware that an expert emergency physician's opinion might have been required without prompting by the argument of opposing counsel. We find no abuse of discretion in the exclusion of Dr. Russell's untimely declaration.

V

Alternatively, plaintiffs argue that expert testimony was not required to raise a triable issue of material fact because a layperson could determine the Hospital was negligent on these facts. In support of this argument, they cite a 1946 wrongful death case, *Valentin v. La Societe Francaise* (1946) 76 Cal.App.2d 1.

“As a rule, expert testimony is required to establish a health care practitioner’s failure to exercise the requisite degree of learning, care or skill so as to satisfy the necessary standard of care. [Citation.] However, in the rare circumstance in which ‘negligence on the part of a doctor is demonstrated by facts which can be evaluated by resort to common knowledge, expert testimony is not required since scientific enlightenment is not essential for the determination of an obvious fact.’ [Citations.] In cases where a layperson “‘is able to say as a matter of common knowledge and observation that the consequences of professional treatment were not such as ordinarily would have followed if due care had been exercised[.]’” no expert testimony is required. [Citations.]” (*Ewing v. Northridge Hospital Medical Center* (2004) 120 Cal.App.4th 1289, 1302.)

The *Ewing* court examined medical malpractice cases where expert testimony was found unnecessary. “The ‘common knowledge’ exception is typically employed in medical malpractice cases in which the misfeasance is sufficiently obvious as to fall within the common knowledge of laypersons. Examples include cases in which a foreign object is left in a patient’s body following surgery [citation], an injury occurs to a body part not slated for medical treatment [citation], or the amputation of a wrong limb. Similarly, expertise may not be necessary in medical negligence cases where the issue is whether the medical professional failed to obtain informed consent. [Citations.] In short, the common knowledge exception applies in cases in which no scientific enlightenment is necessary because the topic is familiar to a layperson.” (*Ewing v. Northridge Hosp. Medical Center, supra*, 120 Cal.App.4th at pp. 1302-1303.)

Plaintiffs’ case does not come within this narrow category of cases. The timing of Mrs. Walker’s condition, the cause, and standard of care for what should have been done to save her baby were all beyond the common knowledge of a layperson.

VI

Plaintiffs also argue that the applicable standard of care here was established by the federal EMTALA statute (42 U.S.C. § 1395dd).

“EMTALA was enacted as part of the Comprehensive Omnibus Budget Reconciliation Act of 1986 (COBRA). It provides that hospitals that have entered into Medicare provider agreements are prohibited from inappropriately transferring or refusing to provide medical care to ‘any individual’ with an emergency medical condition. (42 U.S.C. § 1395dd.)” (*Barris v. County of Los Angeles* (1999) 20 Cal.4th 101, 108-109.) “Under EMTALA, hospitals with emergency departments have two obligations. First, if any individual comes to the emergency department requesting examination or treatment, a hospital must provide for ‘an appropriate medical screening examination within the capability of the hospital’s emergency department.’ (42 U.S.C. § 1395dd(a).) Second, if the hospital ‘determines that the individual has an emergency medical condition,’ it must provide ‘within the staff and facilities available at the hospital’ for ‘such treatment as may be required to stabilize the medical condition’ and may not transfer such a patient until the condition is stabilized or other statutory criteria are fulfilled. [Citation.]” (*Id.* at p. 109.)

In *Barris*, the Supreme Court explained the difference between a traditional cause of action for medical malpractice and the duty imposed by EMTALA: “EMTALA differs from a traditional state medical malpractice claim principally because it also requires *actual knowledge* by the hospital that the patient is suffering from an emergency medical condition and because it mandates only stabilizing treatment, and only such treatment as can be provided *within the staff and facilities available at the hospital*. EMTALA thus imposes liability for failure to stabilize a patient only if an emergency medical condition is actually discovered, rather than for negligent failure to discover and treat such a condition. In addition, *EMTALA imposes only a limited duty of medical treatment: a hospital need provide only sufficient care, within its capability, to stabilize the patient, not necessarily to improve or cure his or her condition.*” (*Barris v. County of Los Angeles, supra*, 20 Cal.4th at pp. 110-111, first & second italics in original, third italics added.)

Since EMTALA establishes only a limited duty, it does not establish the applicable standard of care for this medical malpractice case. We note that plaintiffs here, unlike the plaintiff in *Barris*, did not bring a claim under EMTALA itself.

DISPOSITION

The judgment is affirmed. Each side to bear its own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

EPSTEIN, P.J.

We concur:

WILLHITE, J.

MANELLA, J.